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Supreme Court of the United States

OCTOBER TERM, 1953

No. 274

COMMERCIAL PICTURES CORPORATION,

Appellant,

vs.

THE REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

APPELLANT'S REPLY BRIEF

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APPELLANT'S REPLY BRIEF

I

Appellees have failed to show the constitutionality of any system of censorship.

[NOTE: The Regents were referred to in the singular in Appellant's Main Brief. Since the designation was pluralized in the Regents' brief, we refer to them in this brief as "Appellees".]

It is apparently Appellees' view that there is not much difference between control of motion pictures by the New York system of inspection and licensing and control by subsequent punishment.[1] This view ignores the constitu-

[1] Appellees readily agree, as they must, that motion pictures are now protected by the guarantees of the First and Fourteenth Amendments (Appellees' Brief, pp. 6, 7). But they read *Burstyn v. Wilson*, 343 U. S. 495, as having "stated that under a properly drawn statute an area existed where pre-censorship would be constitutional" (Appellees' Brief, p. 7). This Court was most careful to state in *Burstyn* that it was *not* there necessary to decide whether censorship of any kind might be permissible (*Cf.* Appellant's Brief, p. 13).

tional protection surrounding freedom of speech (See Appellant's Brief, pp. 13-19, 29). We sought to set forth the dichotomy of subsequent punishment and previous restraint. We sought to emphasize, on the one hand, prohibitions against inspection of content and licensing of a free speech vehicle, and on the other, the availability of subsequent punishment for abuse of free speech. This vital distinction is ignored by Appellees when they say (p. 11):

> "The effect of licensing with prior review or criminal prosecution after one or two showings is the same because after criminal action future presentation is likewise barred by the imminence of further criminal prosecution."

We submit that one who abuses the privilege of free speech may not escape responsibility for such abuse, but he may not be suppressed in advance on the authority of a censor, denied the opportunity to speak out, to create a climate of opinion, or to meet charges. It is significant that Appellees have not cited, nor has Appellant found, any decision of this Court upholding a licensing system over speech or expression, where the granting or refusal of the license depends upon content of the expression, other than *Mutual* v. *Ohio*, 236 U. S. 230, which was expressly overruled by this Court in *Burstyn* v. *Wilson*.

Appellees' view that there is no fundamental distinction between subsequent punishment and previous restraint ignores the dangers inherent in New York's system of censorship:

1. The mere existence of an apparatus for censorship, through whose machinery every motion picture must pass for inspection of content has a chilling effect on freedom of expression.

2. The lack of a definite standard in a censorship statute is far more serious than in any law providing

subsequent punishment. What is acceptable to one motion picture censor will be censorable in the eyes of another, and thus the repressive effect on freedom of expression becomes viciously cumulative.[2]

3. The censorship procedure provides no hearing, and decisions refusing licenses rarely set forth reasons. Under this procedure, every case must be judged *ad hoc*, and the possibility of arbitrary or unequal treatment is inherent in this system. Lacking are the protections of criminal procedure, among them trial by jury, cross-examination, burden of proof, confrontation, and control of hearsay and other incompetent evidence.

4. Judicial review of the censor's decision is wholly inadequate. Under the "substantial evidence" test, the censor must be upheld where "fair-minded" men may differ. (See opinion below, 280 App. Div. 260, 261-62, R 50.) Thus, in effect, expressions in a legitimately debatable area can be and are censored,—which is precisely what the First Amendment forbids.

* * * *

Appellees' brief seeks to show that there is a special need for censorship of motion pictures. Even if we accept *arguendo* their premise that this Court will except motion pictures from the protection of the First Amendment on a showing of necessity therefor, Appellees have made no such showing.

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[2] An example of the danger inherent in the inspection and licensing system is evidenced by Case No. 33043 in the Supreme Court of Illinois, *American Civil Liberties Union and Charles Liebman* v. *Chicago*. There "The Miracle", the very picture which had been banned by New York as sacrilegious was denied a license by the City of Chicago on the ground that it was "immoral" and "obscene". What was "sacrilegious", although apparently not "immoral" to the New York Censors was "obscene" and "immoral" to the censors of Chicago.

Consider the experience of "The Moon Is Blue" and "M", censored elsewhere and approved in New York (Appellant's Brief, p. 55).

Indeed, with respect to one important element of such a showing—proof that another method of control, subsequent punishment, is ineffective, Appellees' brief, in effect, concedes the contrary. At pages 11-12, they point out that the State could accomplish its purposes by provision for subsequent punishment, and that the differences between censorship and subsequent punishment are only in procedure. What remains, then, of the argument that censorship is indispensable to the protection of the State?

Appellees set forth a parade of horribles which they seek to associate with motion pictures. Most of them have been anticipated in Appellant's brief (pp. 25-28). Motion pictures have a mass audience (Appellees' Brief, pp. 12, 22), but then so do newspapers, magazines, radio and television. The simultaneity of exhibition is greater in those media than it is in movies. Appellees' effort (p. 13) to depict moviegoers as a "captive audience" is ludicrous. It amounts to the proposition that most people must be protected against their own folly—a favorite tune of the censor.

Appellees' brief (p. 15) seeks to depict motion pictures as contributing to juvenile delinquency. The protection of children without resort to indiscriminate censorship is far easier for motion pictures than for other media. Children can be barred from movie theatres, whereas, it is practically impossible to prevent their obtaining copies of newspapers, books and magazines.

The authorities cited by Appellees to conclude that motion pictures are a force for evil are less than impressive. However, the evil of the censorship situation as opposed to an open trial is again marked out, since under the censorship situation Appellant has had no opportunity to cross-examine Appellees' authorities on juvenile delinquency to ascertain the basis of their knowledge, their qualifications or interest. Despite Appellees'

position on juvenile delinquency, there is very respectable opinion that juvenile delinquency is not caused by motion pictures, and we have set forth some of the opinions of well-known psychiatrists, psychologists and educators in Appendix I of this Reply Brief.

These indicate that juvenile delinquency results from a complex series of causes, psychological and physiological. The effect of motion pictures on youth cannot be isolated from other factors, and it is impossible to determine whether or not any specific film could reasonably be expected to contribute to juvenile delinquency. Emotional unhappiness is the most potent cause of juvenile delinquency. Movies do not make a child "bad" if he is not "bad" from other causes.

Appellees' brief (p. 22) refers to a UNESCO publication. We fail to see its pertinence to Appellees' argument. We should like to direct the Court's attention to the UNESCO publication, "The Entertainment Film for Juvenile Audiences," published by UNESCO in 1950, Publication No. 605, which reports that the "widespread belief of a few years ago that the cinema encouraged juvenile delinquency has long been abandoned by the majority of magistrates and social observers" and states (p. 31):

> "The causes of delinquency are to be sought in problems of the environment, and in the child's affective life, and no case has been cited in which a profound disturbance was provoked by imitation of acts seen on the screen. These causes should rather be looked for in bad home influences, in parents or grandparents who are over-indulgent or unsympathetic, and in social causes such as unemployment and poverty.
>
> . . . .
>
> "We should bear in mind that, as with sex, children exercise a sort of personal censorship.

"It is curious to note how often normal children are indifferent to pictures considered by the adult as dangerous" (p. 33).

As to sexuality and immorality, this UNESCO publication states also (p. 31):

"It may be that, in reality, the prohibitions of sexual problems are less concerned with the protection of the child than with the demands of a puritan and hypocritic morality."

As to censorship, the UNESCO publication states that "the best censors are sensitive parents, who understand children, love them, live with them, and often take them to the movies" (p. 30):

"In the view of many specialists, the scruples of the censor are exaggerated, even unjustified. Despite certain concessions, the censor obeys sentimental inclinations rather than scientific laws. The bans that he imposes are related to educational principles which have often been proved ineffectual; a panic fear of sexuality, of 'bad examples' and of their repercussions on the formation of the child's character.

"The cinema would play the role of scapegoat, and distrust of it would help to hide the causes of a much deeper evil: the shortcomings and faults of education in the family and school."

The New York State Youth Commission, an official state agency established in 1945, which has made studies in delinquency prevention programs, has this month issued a Report entitled "Blueprint for Delinquency Prevention". The Commission is composed of eight New York State Commissioners, among them, Commissioner Wilson of the Education Department. The report indicates (p. 3) that in New York delinquency in 1951 and 1952 was below that in 1938, and that in 1951 there was

a slight increase in delinquency which leveled off in 1952. In considering the causes of juvenile delinquency, the Commission's research does not intimate that motion pictures contribute to juvenile delinquency (p. 1):

"Delinquency Causation

"What is delinquent behavior? Virtually all of the experts, despite widespread disagreements on particulars, agree that delinquent behavior is the product of an individual's reaction to the various stresses to which he is exposed and which he is unable to meet in a socially accepted manner. The ability to meet these stresses and react to them in a socially accepted manner depends upon certain predisposing traits of the human personality and certain facilitating conditions in the environment, including past experiences. Although such predisposing traits are not usually biologically transmitted or inherited, recent investigations would indicate that biological and hereditary factors may play a contributory role in predisposing certain individuals to delinquent behavior.

"The formation of delinquent traits and habits, thus, is usually derived in part from a complicated set of human reactions to such factors as the constitutional characteristics of the individual, his bodily and mental health, degree of intelligence, glandular imbalance, rates of learning, physical appearance and a host of others. Efforts to determine which of these is primary in creating predispositions towards delinquency are fruitless in view of the wide variations in personality and in the conditions which lead to delinquency."

We believe that Appellees' principal argument for censorship, and the possible damage to the youth of the country, lacks supporting data to warrant striking down

the constitutional protections, in view of the availability of subsequent punishment as a means of control, and in view of expert opinion that motion pictures do not create juvenile delinquency.

It is presumptuous to conclude, as do Appellees (p. 21), that "laxity and inertia on the part of some officials is notorious". Likewise, the constitutionality of the New York censorship law does not depend on the calibre of the men and women constituting the Regents (Appellees' Brief, pp. 28-29), nor on whether any responsible group has criticized the Regents (Appellees' Brief, p. 19).[3]

The very doubtful convenience to the motion picture producer, distributor or exhibitor to be told in advance that they may not show a given film in which large sums of money may have already been invested, does not warrant censorship. Under the New York system, motion pictures are not censored in advance of production. Appellees' statement that it is "fairer" to be told in advance whether the motion picture will meet the standards of a particular state is a concern not shared by the industry as represented by the Motion Picture Association, which has filed a brief as *amicus curiae* in a companion case (No. 217) in opposition to censorship. Appellees' argument is also beside the point, because it would warrant censorship of other media such as magazines, books and newspapers. The protection of free expression is not solely or even primarily for the producer, distributor or exhibitor; the public has a stake in the free expression of ideas.

Appellees' suggestion that the people of New York be-

[3] Two responsible groups sought to appear before this Court to express their views of the New York law. The Chairman of the Civil Liberties Committee of the New York State Bar Association requested permission of Appellees to file a brief as *amicus curiae*, stating that Appellant had granted permission. Appellees denied permission. A similar request by the American Civil Liberties Union was likewise refused by Appellees.

lieve in the necessity for censorship (Appellees' Brief, p. 17) does not meet our problem. We do not know the content or progress of the bill referred to by Appellees and there is no public record of its content nor of those in favor or against the measure. That the views of the people of New York are not one-sided is strongly indicated by the message of Governor Alfred E. Smith, quoted in Judge Dye's dissenting opinion (R, pp. 82-83). (See also *Progressive Democracy. Addresses and State Papers of Alfred E. Smith*, p. 282.) Appellees' reliance on the views of a television audience (p. 18) illustrates the absurdity of their argument. A check by Appellant's counsel reveals that the program was local, the audience was small, probably under a hundred, and that the participants were four or five actors, and no constitutional arguments were advanced. Issues of constitutionality are, of course, ultimately for the courts to decide. It is in the nature of our system of government that such issues cannot be definitively answered even by the legislatures of the states or the Congress. To have them depend on the vote of a television audience is absurd.

In summary, Appellees have not made a showing which could serve to justify censorship of motion pictures. They have raised problems which concern us all, such as juvenile delinquency and crime. But they have failed to show (1) what makes motion pictures different from other media, in their relation to these problems, or (2) why the problems cannot be handled by a system of subsequent punishment. This failure is typical of Appellees' entire case. The question is not one of giving a *"carte blanche"* to any medium of expression (*Cf.* Appellees' Brief, p. 15). It is *not* whether motion pictures differ from other media. It *is* whether such differences as do exist demonstrate the necessity of a system of censorship for motion pictures as distinguished from all other media. It is here that Appellees' presentation is fatally defective.

• • • •

A final argument by Appellees in support of censorship, one which was adopted in Judge Froessel's opinion in the Court of Appeals, is that the New York system of censorship is justified because "motion pictures may present a 'clear and present danger' of substantive evil to the community". This point has been refuted in Appellant's brief (pp. 23-25), but a brief additional comment may be appropriate.

This contention completely misconceives the nature and function of the "clear and present danger" terminology. It ignores the recent admonition of this Court not to treat the term "as a mechanical test in every case touching First Amendment freedoms, without regard to the context of its application. . . ." *American Communications Assn.* v. *Douds*, 339 U. S. 382, 394.

The terminology, which originated and developed in cases involving subsequent punishment, makes it clear that expression may not be so punished unless a sufficiently grave and probable evil flows therefrom. The cases cited by Appellees, *Schenck* v. *United States*, 249 U. S. 47; *Gitlow* v. *New York*, 268 U. S. 652; *Terminiello* v. *Chicago*, 337 U. S. 1; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568; *Near* v. *Minnesota*, 283 U. S. 697; *Winters* v. *New York*, 333 U. S. 507, all involve criminal convictions, except *Near* v. *Minnesota*, 283 U. S. 697, in which an injunctive type of restraint on speech was held invalid. Therefore, they cannot support Appellees' statement that "it is wholly within constitutional authority for the State to eliminate the occurrence before it happens" (p. 14).

As stated by Judge Learned Hand, "'clear and present danger' depends upon whether the mischief of the repression is greater than the gravity of the evil, discounted by its improbability". *United States* v. *Dennis*, 183 F. 2d 201, 215 (C. A. 2d), aff'd 341 U. S. 494. Established law, already reviewed in Appellant's brief, makes it clear that the "mischief of the repression" inherent in a system

of censorship cannot possibly be outweighed by abuses of the motion picture medium. The reason is not hard to find. Both Appellees and Judge Froessel concede that it is the occasional picture which creates a "clear and present danger". Yet, they assert this as a justification for a system of total censorship, involving the inspection of almost every film sought to be shown in New York movie theatres. How can this kind of reasoning be confined to the motion picture medium? We may as logically say that all newspapers, magazines, books, television or radio programs and street-corner speeches present a "clear and present danger", in the sense that that term is used by Judge Hand. Indeed, it is likely that an occasional magazine or book will present such a danger, and so, too, may a movie film. They are not immune from all control, but they remain constitutionally protected from censorship, and properly so.

II

Appellees have not demonstrated that the New York Law is sufficiently definite to meet the constitutional test.

Appellees' argument (pp. 27-28) concerning delegation of legislative power shows a misconception of Appellant's position. We have urged that no system of censorship is constitutionally valid. However, even assuming for purposes of argument, that some form of censorship were permissible, a censorship statute containing the terms "immoral" and "would tend to corrupt morals" is unconstitutional. This is so, not because of any doctrine based on delegation of power, but because an indefinite term in a statute governing speech or expression violates the First Amendment guarantees incorporated in the Fourteenth Amendment. See *Winters* v. *New York*, 333 U. S. 507, 509-10.

Appellees' brief, both in points argued and in statutes and cases cited, ignores the fact that freedom of expression is involved here. Of course, even a non-speech statute may offend the procedural due process requirements of the Fourteenth Amendment on grounds of indefiniteness—because it fails to give fair notice of what will be found unlawful, and because it may render judicial review of administrative action impossible. See *Winters* v. *New York, supra; Burstyn* v. *Wilson,* 343 U. S. at 532 (concurring opinion by Mr. Justice Frankfurter). What is of equal importance is that the requirements of definiteness and certainty are much higher when free expression is involved. "This Court goes far to uphold state statutes that deal with offenses, difficult to define, *when they are not entwined with limitations on free expression.*" *Winters, supra,* at 517 (emphasis supplied).

Moreover, the test of definiteness to be applied to a censorship statute must be especially stringent. In the *Burstyn* case, this Court pointed out that "previous restraint is a form of infringement upon freedom of expression especially to be condemned". It went on to note that, even assuming that some censorship might be permitted, such permission was possible only in "exceptional cases", and "the State has a heavy burden to demonstrate that the limitation challenged here presents such an exceptional case". *Burstyn, supra,* at pp. 503-504.

In applying this very strict test in *Burstyn* the Court placed principal reliance on the indefiniteness of the term "sacrilegious". In the present case, the State has the same "heavy burden" to show the definiteness of the terms "immoral" and "tend to corrupt morals." We submit that it has failed to do so.

Appellees urge that the term "immoral", in contradistinction to the term "sacrilegious", presents no problem. They argue that "there are commonly accepted standards of morality which are known and understood by all"

(Appellees' Brief, p. 23). This thesis has been fully refuted in our brief (pp. 32-41). Appellees' certitude may be compared with Judge Learned Hand's statement: ". . . people differ as much about moral conduct as they do about beauty", in *Johnson* v. *United States*, 186 F. 2d 588, 589 (C. A. 2d) (dealing with conduct, not speech, relating to sex).

The cases cited by Appellees (pp. 24-26) for the proposition that the courts have given a definite and ascertainable meaning to the term "immoral" are inapposite. A large number of them involve statutes using the term "obscene" and "indecent", and Appellees' reason for citing them appears to be that the opinions used the term "moral" or "immoral".[4] There is an obvious difference between the use of the term as a standard for censorship of speech, and its use by way of description in a judicial opinion. Others of the cases cited refer to non-criminal statutes relating to immoral conduct, not speech,[5] and are therefore inapposite. The two federal cases cited do refer to statutes containing the word "immoral", but in both instances the Court addressed itself to the question whether the books involved were obscene and determined they were not. The definiteness of the term "immoral" was not before the Court.[6]

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[4] *Swearingen* v. *United States*, 161 U. S. 446; *People* v. *Muller*, 96 N. Y. 408; *People* v. *Eastman*, 116 App. Div. 922, aff'd 188 N. Y. 478; *People* v. *Pesky*, 230 App. Div. 200, aff'd 254 N. Y. 373; *Halsey* v. *New York Society*, 191 App. Div. 245, aff'd 234 N. Y. 1; *People* v. *Eagle*, 203 Misc. 598, 117 N. Y. S. (2d) 380.

Completely irrelevant are *In re Brenner's Will*, — Misc. —, 44 N. Y. S. (2d) 447; *Hoops* v. *Hoops*, 266 App. Div. 512, rev'd 292 N. Y. 428, and *Jones* v. *Poole*, 62 Ga. App. 309.

[5] *Matter of Haverly*, 180 Misc. 16; *Orloff* v. *Los Angeles Turf Club*, 208 P. 2d 987 (Cal. App.); *In re Hicks*, 163 Okl. 29; *Moore* v. *Strickling*, 46 W. Va. 515.

[6] *United States* v. *One Book Entitled "Contraception"*, 51 F. 2d 525; *United States* v. *One Book Entitled "Married Love"*, 48 F. 2d 821.

The same may be said of *People* v. *Wendling*, 233 App. Div. 704, rev'd 258 N. Y. 451.

Similarly, *Jordan* v. *DeGeorge*, 341 U. S. 223 is not applicable. A divided Court held that the term "crime involving moral turpitude" was sufficiently definite to support deportation proceedings. It may be noted that the statute there was not criminal, that conduct—concededly unlawful conduct—and not speech was the subject of the statute. There was no intimation that the Court would extend its ruling to either criminal statutes or statutes governing speech.

Appellees' conclusion that the New York State courts have successfully dealt with the term "immoral" (pp. 23, 25) is best tested by the Court of Appeals' decision in the present case. On the contrary, as described in a recent lower Court Maryland decision, *United Artists Corp.* v. *Traub* (No. 295, Baltimore City Ct.) which dealt with the motion picture "The Moon is Blue":

> ". . . the four-judge majority, upholding the New York censorship law, were unable to agree on the meaning of the word 'immoral' in that statute. One judge saw a gradation in the statutory words 'obscene, indecent or immoral' showing that 'immoral' has particular reference to sexual immorality. Another thought that the word described anything *contra bonos mores*. A third judge agreed with the first except that he thought he should have gone as far as the second. The fourth agreed with the first only, and the two dissenting judges thought the word 'immoral' had no determinable meaning."

In this respect, it should be noted that Judge Froessel conceded that the term "immoral" "considered in the abstract, may be deemed broad, even as limited by common usage". Thus, four of the six judges of the Court of Appeals, Judges Froessel, Lewis, Dye and Fuld, regarded the term "immoral" as indefinite.

Appellees also cite an array of New York statutes in which the words "moral" and "immoral" appear, and urge that these are typical of all the states. They then draw the inference that, unless this Court upholds the use of the term "immoral" in the present case, all of the statutes with that term will be invalidated. We are willing to assume that the term frequently appears in statutes, but Appellees' inference is completely wrong, since it is based on a failure to see that the degree of certainty required varies according to the character of the statute. Thus, statutes which deal with government employees or with licensing of trades or professions are entirely irrelevant. Moreover, even the Penal Law statutes cited are not in point unless they relate to speech or expression, as distinguished from conduct. In this light, the number of statutes relating to speech or expression in the Penal Law shrinks to three, Sections 1140a, 1141 and 1141a, in each of which there are many standards, of which immoral is only one. Of course, these three Penal Law provisions do not involve previous restraint.

Appellees argue that the term "immoral" must be viewed by this Court as limited to "sexually immoral" (pp. 23, 26), urging that the Court of Appeals so limited it. Were there an authoritative decision of the Court of Appeals to that effect, we would agree. But to the extent that we may rely on the opinions in the Court of Appeals for guidance, we must reach a contrary conclusion. The fact is that four of the six judges sitting were of the view that the term was not to be limited to sexual immorality. (See Appellant's Brief, p. 30.)

That the Third Department of the Appellate Division has subsequently taken the view that the Court of Appeals meant to limit the term to sexual immorality is not binding on this Court, because in the absence of an authoritative decision by the Court of Appeals the Third Department was free to reach its decision independently.

This decision is not binding, either on the Court of Appeals, or for that matter, on any of the other Departments of the Appellate Division.[7]

Even if the term "immoral" were limited to the area of sex, it does not thereby become sufficiently definite to be constitutional. The area covered by the term is thereby narrowed but the question of what is moral and what is immoral within that area remains as vague as ever. For example, to some it is sexually immoral to divorce, to kiss, to marry a person of another race, or a relative of a certain degree, to limit procreation, to have plural marriages, to others, such conduct might be acceptable. Had the Court of Appeals decided that sexual immorality was synonymous with obscenity, we would have a clear and definite standard. This it did not do. Nowhere does Judge Froessel intimate that the terms "obscene" and "immoral" in the statute now mean the same thing. If he had, the effect would have been to read the term out of the statute. Moreover, neither the Department of Education nor the Regents regarded the two terms as synonymous.[8] Certainly, no one—neither the administrative officials nor any judge—has regarded the film as obscene.

It seems clear, therefore, that "sexual immorality", as used by Judge Froessel, did not mean obscenity, but referred to something more. "La Ronde" fell into that area of "something more". But we are left to speculate just what that area is, and just why "La Ronde" is in it.

Appellees use the word "immoral" with great frequency and confidently assert that it can be easily applied to matters of sex, but we find no effort to define the term,

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[7] *Cf. Tripp, A Guide to Motion Practice*, 158 *et seq.*, 168 *et seq.* (Rev. ed., 1949) (Supp., pp. 62-65).

[8] Compare their treatment of the film "Teenage Menace" noted in *Broadway Angels* v. *Wilson*, — App. Div. —, 125 N. Y. S. 2d 546, N. Y. L. J. 1947, Nov. 18, 1953.

or even to give it boundaries. The term "sexual immorality", in the hands of motion picture censors, is bound to have the effect described by Mr. Justice Frankfurter, concurring, in the *Burstyn* case:

> "To allow such vague, indefinable powers of censorship to be exercised is bound to have stultifying consequences on the creative process of literature and art—for the films are derived largely from literature." 343 U. S. at 531.

III

"La Ronde" is not "immoral" under a constitutional application of the New York Statute.

Appellees have described "La Ronde" in their brief (pp. 3-4, 7-10, 21) by a series of lurid adjectives which are misleading. After reading their description, one can only wonder how such a film could have been nominated for a Hollywood Academy award for story and art direction; awarded top honors at three International Film Festivals; voted the best picture of 1951 in Britain from any country; had long and successful runs in over one hundred cities in twenty-four states and in Washington, D. C.; and received exceedingly favorable reviews of critics whose business it is to make value judgments concerning motion pictures.[9]

We will not here reply in detail to Appellees' statements concerning "La Ronde", since the Court is viewing the picture. A few points, however, must be noted.

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[9] Contrast Appellees' statements with those of Dr. Hugh M. Flick, Director of the Motion Picture Division of the New York Education Department, quoted in Appellant's brief (p. 53n), that "La Ronde" is a "well-made and well-meant movie".

Appellees' quotation of a review of "La Ronde" from the publication "Films in Review" obviously refers to a version of the picture before it was imported into this country.

Appellees refer in their brief (pp. 7-8) to the case of *People* v. *Pesky*, 230 App. Div. 200, aff'd 254 N. Y. 373. The characterizations of the book expressed in that opinion do not apply to "La Ronde". The evidence as to the contents of the book in the *Pesky* case appears on page 202 of the Appellate Division opinion where statements from the introduction to the book are quoted in the opinion. That introduction by the publishers of that edition is not contained in other translations of the play and is not, of course, in the motion picture "La Ronde". It seems indefensible to attribute to "La Ronde" quotations from an introduction to a particular edition of a book which has no relationship to and which is not in "La Ronde". Appellees appear to be aware of the difference between the content of the book, which was the subject of the *Pesky* case, and the film.[10]

The only material in the Appellate Division opinion which quotes the language of the book—as distinguished from the introduction to it—is at page 204 of the Appellate Division Report. "La Ronde" does not contain that language nor any situation intimated by the quoted language.

There have been other publications of Schnitzler's "Reigen" which have met with no adverse criticism, among

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[10] Thus, Appellees say on page 8 that the "most vicious feature of the film, which was not contained in the original book, . . . is the closing statement of the 'Master of Ceremonies' . . .". The translation of the phrase "C'est L'histoire de tout le monde" is wrong. At page 21 of Appellees' brief appears a more accurate translation of the same French phrase. There is no indication that the Motion Picture Division objected to this line at the times the picture was submitted, either before or after "cuts" were made.

them a Modern Library publication (R. 94) and one published by the University of Indiana Press.[11]

Appellees state that the picture "depicts" action involving violations of the Penal Law (p. 7). Aside from the fact that Appellees' documentation is inaccurate,[12] the point seems to be that a film theme which shows unlawful activity must be banned. As we have pointed out, the crucial question is not the theme, but treatment of the theme.

With respect to artistic treatment Appellees concede that the film contains "outstanding performers, perfect acting; tunes, now nostalgic, now spritely; brilliant scoring, cueing and staging . . ." (p. 21). They urge that the film should be banned, not because it offends, but because it is too attractive. Appellees' view reflects a complete failure to see that artistic and emotional integrity is a major factor in determining whether a work will live and should be seen and heard. If their view were extended to literature it would render the classics far more suspect than ordinary works—precisely the reverse of what Congress and the Courts have done.

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[11] A letter to the attorney for the Appellant from Random House, Inc. and The Modern Library states that the firm published "Reigen" by Arthur Schnitzler in The Modern Library in 1933, that the book was withdrawn from the series in 1940 for the reason that public interest in the plays had dwindled and that "at no time was any question raised about the propriety of these plays. The sale was quite adequate and the reception of the volume praiseworthy." So, too, the University of Indiana Press has been publishing the play as part of an anthology, "From the Modern Repertoire", edited by Eric Bentley, drama critic of the New Republic. The Anthology is now in print and is currently being sold in book shops, such as Brentano's, for five dollars.

[12] For example, we can find nothing in "La Ronde" which can be said to depict violations of Penal Law, Sections 2175-2177 (seduction of previously chaste female under promise of marriage), or of Section 2460 (compulsory prostitution of women).

CONCLUSION

The judgment of the Court of Appeals should be reversed and the determination of the Regents annulled, and "La Ronde" should be permitted to be exhibited in New York State.

Respectfully submitted,

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APPENDIX I

Juvenile Delinquency as Affected by Motion Pictures

THE OPINIONS OF PSYCHIATRISTS, PSYCHOLOGISTS AND OTHERS, SET FORTH HEREIN, WERE GATHERED BY THE MOTION PICTURE ASSOCIATION OF AMERICA.

Dr. Mark A. May (Professor of Educational Psychology, Director of Institute of Human Relations, Yale University, Chairman of the Commission on Motion Pictures in Education of American Council on Education)

"In my view the motion picture, comic strip, and radio, constitute only a part of the much larger set of complex factors which influence character development and behavior. With existing scientific techniques it is exceedingly difficult, if not impossible, to isolate any one of these factors and measure its effect. Whatever opinions people may hold concerning the influences of the media of mass communication, no one can say that the effects of any one of them or any combination of them have been scientifically measured. The point is that people who believe that these media have a bad effect on youth cannot fairly say that their opinions have been scientifically proven.

"Quite apart from the scientific aspects of the problem, I can't imagine what standards or criteria any government agency could apply to a film to determine whether or not it could be 'reasonably expected to contribute to juvenile delinquency.'

"As a citizen, I would be opposed to this bill on the ground that it puts the government squarely in the thought-control business, which runs directly counter to one of the basic principles of democracy. If our government ever gets a monopolistic control of the mass media of communication, the stage is then set for a totalitarian form of government. I think that all moves in this direction should be opposed

by citizens who recognize the danger of thought-control on the part of governments."

(From a letter to Arthur DeBra of the Motion Picture Association, March 21, 1950)

Paul W. Tappan (Professor of Sociology and Lecturer in Law, New York University)

"The general normative problem in recreation—the desirable forms to be encouraged and the undesirable to be censored—is one of infinite complexity in the contemporary, highly diversified society . . . Usually, the persons most exercised to do something about these 'agencies of moral risk' are emotional, subjective parties in interest, eager to foist their own moral predilections upon the community; their crusades of censorship may produce more injury than advantage to the community . . . Since literature, art, or commercial recreation stimulating or diverting enough to be popular could conceivably have some deleterious effect upon moral defectives, a case can be made out for the suppression of almost any form of entertainment that a censor, official or self-delegated, dislikes. Thus the more extreme moralists aspire to reduce the entire field of recreation to so low a level of appeal as to be innocuous to the dull, the psychopathic, the emotionally unstable, and the antisocial . . . In this whole field, important as it is, there has been pathetically little objective research or reliable fact finding. In the area most intensively studied thus far—motion pictures—the findings have not warranted the dire warnings from some quarters about malignant effects upon children . . . A given motion picture does not have a uniform influence on the individuals who observe it, and motion pictures in the mass show cancellation as well as waning of effect. There is no evidence that children form basic attitudes to authority or morality from exposure to motion pictures. It is true that in a few poorly administered delinquency researches, in response to leading questions,

children have projected blame for their defections on motion pictures; such data provide no index of causation, of course. Most of the delinquency studies have pointed, on the contrary, to a very small proportion of offenders who are excessive in their motion picture attendance, little more than among non-delinquents. (Healy found evidence in only nine cases out of 823 of children who displayed an excessive interest in motion pictures . . . Cyril Burt found a 'burning interest' in 7 per cent of his male delinquents and 1 per cent of the female. However, H. Blumer and P. M. Hauser . . . claimed that 10 per cent of the male delinquents they interviewed and 25 per cent of the female offenders believed motion pictures had some direct effect upon their law violations. These children were asked if the movies they had seen had affected them. This constitutes no proof whatever on causation, of course, but a convenient rationalization to the interviewees.) In these instances of over-indulgence in motion pictures the problem is apparently one of personality rather than character for the most part: the child's engagement in excessive fantasy or escape may find expression both in delinquency and motion-picture attendance, but there is no indication of direct causal influence from the recreation to the antisocial behavior. More often motion pictures may prevent misconduct through providing a harmless outlet. A child does not develop a disposition to delinquency in the motion-picture theatre, but in the home and neighborhood . . . Except for preserving the basic elements of common decency, rights of privacy, and reputation, no justification has been shown for moralistic censorship in any careful study of motion pictures. More rigid censorship cannot substitute for or diminish the need for good case work with unadjusted children and adults. At least as strong a case can be made that maladjustments are intensified through tight and prudish censorship."

(Tappan, Paul W. Juvenile delinquency. N. Y., McGraw-Hill, 1949, pp. 151-154)

Sir Cyril Burt (Professor of Psychology, University of London)

"A debate in the House of Lords, and the correspondence that followed it, have once again drawn public attention to the increasing frequency of juvenile crime. A curious feature of the discussion has been that few of the writers realize that the study of juvenile delinquency is a psychological problem, and that the discovery of its causes, and the best means of treating it, is primarily a subject of scientific research . . . And in suggesting presumable causes . . . nearly all the contributors, medical and legal as well as lay, plainly believe that a sufficient ground for a dogmatic pronouncement is a personal impression or an a priori deduction from the writer's cherished theories . . . So far as the study of delinquency is concerned, nothing short of a rigorous scientific approach will suffice. All possible roads should be followed by a coalition of specialists in all the relevant fields. An up-to-date knowledge of normal psychology, and an adequate training in the techniques of psychological research, are undoubted prerequisites . . . And to those who are neither psychologists nor doctors, but occasionally read what both have to say, may I express a plea for a little healthy scepticism? There is a valuable warning in one of Francis Galton's papers; 'When you hear a fresh statement about human beings, ask: Is it based on experiment? If not, suspend your verdict. Is it confirmed by statistics? If not, beware of trusting it.'"

(Burt, Sir Cyril. Recent discussions in juvenile delinquency. BRITISH JOURNAL OF EDUCATIONAL PSYCHOLOGY, Feb. 1949, pp. 32-43)

"The cinema, like the 'penny dreadful' before the advent of the film, has been freely censured and abused for stimulating the young adventurer to mischief, folly, and even crime . . . Perhaps none is so eager to advocate this view as the young culprit himself, who frequently sees, or thinks he sees, in such a derivation of his deeds a chance to

deflect blame and attention from his own moral laxity to that of the producer of films . . . When all is said, however, it is easy to overblame the cinema, to exaggerate the actual harm and ignore the possible good. It is clear that, in comparison with the incalculable number of films that are manufactured and released, the offenses resulting are infinitesimally few. The victims are almost wholly those who, temperamentally or otherwise, are already disposed to antisocial conduct; and the cinema can do little more than feed and fan the latent spark. Fortunately those who are susceptible to the more demoralizing points are scarce . . . For others—the steady and the healthy minded—the picture house supplies an alternative, not a provocative, to mischievous amusement."

(Burt, Cyril. The young delinquent. N. Y., D. Appleton & Co., 1929. pp. 137-143)

Dr. Marshall B. Clinard (Professor of Sociology, University of Wisconsin)

"It is conceivable that were all three media (motion pictures, radio, comics) to disappear from our culture, we would still probably have almost as much delinquency. Certainly, we had delinquency and crime before any of the three were considered of consequence . . . A realistic appraisal of these forms of entertainment indicates that while there are cases in which they may be important, on the whole their direct influence on the juvenile is either almost nil or serves only to aggravate already existent attitudes and personality traits . . . It is doubtful that many cases can be found where, even though there was no evidence of prior deviant behavior, it occurred as a result of such contacts of a secondary nature. Much of this material represents a world of impersonal fantasy rather than having personal reality . . . The public does not wish to face the deeper questions of why juveniles are so interested in such entertainment, because it would involve its own interests in similar material. Likewise it marks a reluctance on the part of the public to deal effectively with

basic future factors such as general disobedience to law, the presence of disorganizing influences in local neighborhoods, political corruption, and certain emphases in our culture such as materialism and extreme individuality . . . The tendency of the public mind in dealing with social difficulties is to take the easiest course."

(Clinard, Marshall B. Secondary community influences and juvenile delinquency. ANNALS OF AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, Jan. 1949, pp. 42-54)

Henry D. McKay (Supervising Sociologist, Illinois Institute for Juvenile Research)

"As a result of the relatively large amount of time spent at the movies, listening to serials or murder mysteries on the radio, or reading comic books, the modern child can imitate a machine gun, shoot or be shot with appropriate histrionics, anticipate the plots of murder mysteries, or play the role of superman. But there is reason to believe that these are just forms of play, without much meaning or significance in the formation of conduct patterns. Basic attitudes and values, it is felt, are not effectively transmitted through these more impersonal media of communication."

(McKay, Henry D. The neighborhood and child conduct. ANNALS OF AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, Jan. 1949, pp. 32-41)

U. S. Federal Security Agency. Children's Bureau

"Does the influence of gangster movies, detective stories, and radio thrillers cause juvenile delinquency—a question that worries many parents. Probably not, for many children attend such pictures regularly and listen to such radio programs almost every night before going to bed and yet never become delinquent."

(Understanding juvenile delinquency. Wash., Children's Bureau Publication 300, 1949. p. 6)

W. D. Wall and E. M. Smith (University of Birmingham Institute of Education, England)

". . . the investigator becomes more and more aware of the immense difficulty of objective research into so complex a field. In particular, we appear to have little evidence—even of an inferential kind—of the likely effect of the cinema on fantasy formation and on the unconscious life generally. Nor do we as yet have any means of estimating what an individual accepts from among the many stimuli offered and what he rejects or passes over."

(Wall, W. D. and Smith, E. M. The film choices of adolescents. BRITISH JOURNAL OF EDUCATIONAL PSYCHOLOGY, June 1949, pp. 121-136)

The Magistrates' Association of Great Britain

"Children and the Cinema.—Your Council was asked to submit a memorandum to the Committee set up by the Home Office to report on Children and the Cinema. Your Council has considered this matter from the point of view of the relation between attendance at cinemas and juvenile delinquency, and has submitted the following memorandum to the Committee:—

1. There is general agreement among psychologists that the cinema is seldom, if ever, a cause of juvenile delinquency.
2. Anti-social conduct arises from deeper causes than the imitation of things done on the screen.
3. When the cinema is blamed for a child going wrong, it will generally be found that such a child is one who would go wrong in any case.
4. There is no evidence from any other country that there is a relationship between the cinema and juvenile delinquency.
5. The cinema keeps boys out of mischief, men out of public houses and girls from the streets.

6. The young are not more wicked than they were before cinemas, but cinemas are a convenient scapegoat like the penny dreadful in its day.
7. Investigations have never found any correlation between delinquency and attending the cinema.
8. Emotional unhappiness is the most potent cause of juvenile delinquency. The unhappy child is most likely to seek forgetfulness in the unreal world of the cinema.
9. Both delinquency and over-devotion to the cinema are an exaggerated craving for excitement, and due to lack of encouragement to take up more creative hobbies."

(Great Britain. The Magistrates' Association. Twenty-Eighth Annual Report and Statement of Accounts, 1947-1948. Tavistock House South, Tavistock Sq., London, W. C. 1. pp. 18-19)

Dr. Nathan W. Ackerman (Psychiatrist, Director of the Council Child Development Center in New York City)

"Parents often assume that dramatic programs or comics create pathology. This is erroneous. No matter how weird or violent they may be, programs don't *create* disturbances. But given a child who evidences disturbance, one must question the effect of the stimulus (radio, movie, or comic book) on this particular child. Pathology enters the picture when the emotional disturbance persists over a long period and is palpably heightened by this type of entertainment. A radio program or movie may precipitate in the child an overt expression of an underlying anxiety. In such a case the program should not, perhaps, be said to be harmful, since other accidental stimuli may also create similar effects. We must, however, always be aware of the emotional disposition of each child in order to protect him, when necessary . . . One cannot, of course, generalize on the value or harm

of such experiences. How well each child will succeed will depend upon whether he is strong enough to meet fear and end up with a feeling of mastery over it, or is overwhelmed by the experience and unable to cope with it."

(Frank, Josette. Chills and thrills in radio, movies, and comics. CHILD STUDY, Spring 1948, p. 44)

Dr. Lauretta Bender (Associate Professor of Psychiatry, New York University Medical School)

"A resourceful parent can actually help to resolve the child's anxiety through a movie or radio program by giving him a chance to talk out his own problems in relation to the situation presented in it. This presupposes, of course, that parents are able and willing to listen, to explain meanings and to clarify confused ideas . . . Let the children listen and look. We do not always know the problems they are trying to solve or what they are groping for."

(Frank, Josette. Chills and thrills in radio, movies, and comics. CHILD STUDY, Spring 1948. p. 42)

Robert E. Coulson (Assistant State's Attorney in Illinois in charge of juvenile offenders)

"Donald GN in our city attended the motion picture 'Dillinger' and later that week committed a burglary. It would be easy to blame the burglary on the movie. But during that same week, we had four other kid burglars who had not seen the movie, and I learned that over five hundred kids had seen the picture. Did the movie cause the burglary? Wasn't there some other factor which loaded the evil projectile, and for which the movie was only part of the pressure on the trigger? If Donald hadn't seen the movie, he might have read some fairy stories and tried to push some friend into the furnace, or he might have read the Bible and learned of several ways to kill his brother. Shouldn't we look to the leading

factors rather than the trigger cause? Once the mechanism is loaded and prepared for firing, any device—the falling of a leaf or the excitement of a home run—might set off the charge."

(Coulson, Robert E. Little Donald took an axe. HARPER'S, May 1948, pp. 385-393)

Franklin Fearing (Professor of Psychology, University of California at Los Angeles)

". . . radio and motion pictures have been viewed with alarm by almost all the professional viewers-with-alarm . . . These attitudes have not only been negative in the sense that radio and films have been viewed with suspicion, there is also some evidence that these media have come to play the role of scapegoats for whatever ills and problems beset us . . . . It seems to me that all this indicates a great deal of unclear thinking and a pressing need for clarification. These negative, restrictive and punitive attitudes seem singularly irrational and puerile as applied to media which possess such a colossal educational and cultural potential. Such attitudes, leading as they do to various forms of arbitrary and quite irrational censorship, may seriously delay the full utilization of the educational and creative resources of films and radio in a democratic society.

"To a psychologist such restrictive attitudes with their emotional overtones of hostility suggest a hidden fear . . . . There are undoubtedly many adults who really fear what might happen if the resources of radio and films as agencies of public enlightenment were fully exploited. There are others who, deeply insecure and deeply disturbed by problems and forces which they do not understand, seek scapegoats in the form of simple causes outside themselves on which blame may be placed . . .

". . . children come to a motion picture already sensitized by the climate of belief in which they have been condi-

tioned, and the environment in which they have had their experiences. What they see in the picture is largely determined by this fact . . .

"It is necessary to avoid simplistic cause-and-effect conclusions regarding social phenomena. Antisocial acts are never the result of a single cause. The kind of thinking which attributes delinquency to the radio, motion pictures, broken homes, marijuana, delinquent parents or any other single factor delays solution of these problems . . .

"The world of the child is not the world of the adult. What shocks or disturbs the adult, does not necessarily shock or disturb the child . . .

"There is some indication that many adults are shocked by what they see and hear in motion pictures and radio because of their own feelings of guilt and failure as regards the problems and material presented . . .

"The profound long range effects which motion pictures and radio may have on children suggest that our efforts should be directed towards the exploration of the creative possibilities of these media in a democracy . . . And obviously, the full potential of these media will not be realized so long as negative and punitive attitudes towards them prevail . . . I do not think we need be too much disturbed if Johnny sees a machine gun in action in a film or hears one on the radio and then appears obsessed with a desire to imitate the noises. After all there was a war a little while ago, and Johnny probably has heard of that too."

(National Probation and Parole Assn. Redirecting the delinquent. 1947 yearbook. N. Y., Macmillan Co., 1948. pp. 78-92)

Dr. William F. Healy and Dr. Augusta F. Bronner (Psychologists, each a Director Emeritus of the Judge Baker Guidance Center, Boston)

"What about the ideas children derive from movies, radio programs, sensational types of newspapers? To answer this question categorically or in statistical terms is impossible. For here again the individual finds more or less what he is seeking, however unconsciously. One boy identifies himself with the hero, another with the villain. The common and frequent presentation of ideas of crime or delinquency generally does not induce youngsters to become delinquent. One picture or program succeeds another so rapidly that nothing much remains in the mind.

"In the main, the immediate precipitating cause of delinquent behavior is in the emotional life of the delinquent: in his feeling about himself, his conditions and circumstances . . . The really satisfied youngster is not delinquent. Delinquency is a reactive, impulsive endeavor to find direct or indirect substitutive satisfactions for natural urges. Most influential, as the background whence springs the feelings, attitudes, and behavior of the child and adolescent, is the life of the family, the interrelationships among its members, and their ideals."

(47th yearbook of the National Society for the Study of Education. Part I: Juvenile delinquency and the schools, edited by Nelson B. Henry. Chicago, University of Chicago Press, 1948. pp. 30-47)

Dr. Harold E. Jones (Psychologist, Director of Institute of Child Welfare, University of California)

"Ever since radio and motion pictures became indispensable means of entertainment, they have served as targets for repeated shafts of criticism. There are undoubtedly many who sincerely believe that these forms of amusement are by and large a very evil influence in the lives of children. These views are sometimes supported by a little evidence. They are also backed by a variety of

prejudices . . . First, I believe that some who criticize radio and movies are themselves unable to enjoy these forms of entertainment . . . Criticism based on snobbery is usually undiscriminating criticism.

"Psychologists have an amused suspicion that some who criticize the movies get too much pleasure out of them, pleasure of a rather secret character which they are unwilling to admit. Hence they project their own guilt reactions upon the movie producers . . .

"There is of course no question but that movies and radio place a strong emphasis upon scenes of violence . . . This preoccupation with combat and carnage should not be interpreted directly as an indictment of the motion picture producers, for to a large extent they are giving us what the public (or their public) accepts . . .

"We know very little about the proportion of cases for whom a movie is merely a passing entertainment, the proportion for whom it may occasionally serve a rather definite therapeutic purpose by way of emotional release, and the proportion who are stimulated by it to overt delinquency. It seems very probable, however, that if in some miraculous way we could suddenly clean up the movies and get rid of all damaging elements, the other factors contributing toward delinquency would still give us a shockingly high delinquency rate. My guess is that it would be very little lower than our present rate, unless at the same time many other things in our society were changed.

"It is not surprising, however, to find radio and motion pictures rather generally blamed for a good deal of juvenile delinquency. The parent who feels a sense of guilt about his own role in the family and his own social responsibility is sometimes only too glad to find a scapegoat in Hollywood or in the radio. The youth who is caught in a lawless act may be only too glad to say, 'I got the idea from the movies,' or 'I learned how to do

it from *Gangbusters.*' . . . It is my personal belief that ipso facto the senator from Nebraska should no more be held responsible for year to year fluctuations in rainfall, than should Hollywood or the radio for minor changes in the delinquency rate. The tendency of the American people, or of any people, to project guilt on any convenient and vulnerable victim may lead to very confusing results in our interpretation of social processes . . .

". . . a certain amount of juvenile delinquency—not all, but an important part of it—is a symptom of a sick social order. Bad radio, bad movies and bad behavior of delinquents and criminals are each symptomatic of underlying defects in our society . . . Our problem is not merely a problem of radio and movies in themselves, but more basically a problem of the family, of the school, of economics, of the total culture . . .

". . . the intelligent parent can take more responsibility for helping his child to develop a critical appreciation of motion pictures and of radio programs . . . What is of course needed is not an authoritative classification of movies and radio programs as good or bad, but the development among children of their own powers of appraisal."

(National Probation and Parole Association. Redirecting the delinquent. 1947 yearbook. N. Y., 1948. pp. 66-67)

Dr. David M. Levy (Assistant Clinical Professor of Psychiatry, Columbia University)

"Judging by the mothers' accounts of patients brothers and sisters, it seems fairly obvious that the majority of children do not have acute symptoms. The children who *do* react to an exciting movie with night terrors, for example, are reacting to an experience which sets off anxieties usually related to hostile impulses toward someone in their own intimate environment—toward a parent,

parent-substitute, brother or sister. As an original source, without any reenforcement from past experiences, I believe the movies are unable to precipitate acute anxiety except in children of pre-school age."

(Frank, Josette. Chills and thrills in radio, movies, and comics. CHILD STUDY, Spring 1948, p. 43)

Edwin J. Lukas (Executive Director of the Society for the Prevention of Crime)

"I can't subscribe to the doctrine that certain motion pictures are, necessarily harmful to children because they might develop or give expression to delinquent traits . . . It is to be doubted seriously that a gangster film of itself would inspire a youngster to commit a crime of violence or that a murder mystery might result in similar murder by one of the audience unless that child or person were already susceptible to that kind of suggestion. And a child or person that is vulnerable is a sick child or person made sick by circumstances in his purely personal life. Actually, in the case of the average child, escapist movies can conceivably help him vicariously to discharge his accumulated hostilities and aggressions. For every boy who has been tempted to stage an amateur hold-up after he saw the latest movie thriller, there are probably millions of others who were not so tempted. And in the case of that delinquent we would undoubtedly find many other causes for his behavior, the movie being perhaps the least motivating . . . Such a youngster is already predisposed toward that behavior and any one of the highly suggestible influences easily found in his environment might just as easily plunge him into delinquency."

(Mutual Broadcasting System. The influence of radio, motion pictures and comics on children. N. Y., New York State Committee on Mental Hygiene, 1946. p. 10)

"I have had the conviction for some time that the influence of motion pictures upon the behavior of children has

been grossly exaggerated. One gets the impression as time goes on that the tendency on the part of many people to fasten blame on such media as motion pictures and radio and comics for the anti-social behavior of young people represents an unconscious effort to shift responsibility from where it belongs, namely the home, the school and the community. This is an over-simplification of both the causes and contributory factors in criminal behavior, and when we over-simplify causes we almost always over-simplify remedies."

(New Movies, April 1948, p. 15)

Capt. Rhoda Millikin (Head of the Women's Bureau of the Washington Police Department)

"I have yet to find a child who got in trouble with the police from what he saw in the movies. His irregular conduct is the result of conditions at home, and he sees in the movies the things to which he has already been conditioned."

(New Movies, April 1948, p. 27)

Dr. George D. Stoddard (President of University of Illinois)

"There is little evidence that the motion picture has much effect upon the behavior of children and youth. When a healthy high-school boy chooses to spend three hours on a sunny Saturday in a world of make-believe, the trouble is not in the motion picture, but in the quality of home and neighborhood life. Frequently it is conspiracy between frustrated parents and frustrated children: neither knows what to do with the other . . . Anyone who is anxious about the contents of motion pictures should analyze Homer, the Old Testament, Shakespeare, Mother Goose, or the modern novel. Terrible things happen to men. It is inevitable that they find a place in dramatic art."

(School and Society, March 6, 1948, p. 179)

Judge Camille Kelley (Memphis Juvenile Court Judge)

"There are not as many as half a dozen cases in the 45,000 I have tried where movies have even been brought into the case as a contributing factor to the behavior problem."

(Boxoffice, May 3, 1947, p. 111)

Dr. Maud A. Merrill (Professor of Psychology, Stanford University)

"Even in the case of quite unbiased observers, attempts to separate factors on the basis of frequency into major and minor causes of delinquency often represent subjective evaluations rather than objective classifications . . . Because of the multiplicity of these determining factors and also because of the difficulty of establishing causal relationships, even where the factors are known to exist, the answers to our why will still be equivocal . . . It does not, of course, follow, that because these things have happened in the development of a delinquent child they are therefore causally related to his maladjustive behavior . . . Mere concomitance, of course, is insufficient in itself to demonstrate a causal basis for the relationship."

(Merrill, Maud A. Problems of child delinquency. Boston, Houghton Mifflin, 1947. pp. 10-11)

Dr. Hortense Powdermaker (Anthropologist, Queens College)

"Would-be reformers, looking for easy solutions, regard the movies as a prime cause of delinquency, crime and drunkenness. But these are symptoms of social and individual pathology, with a complex history."

(Annals of American Academy of Political and Social Science, Nov. 1947, pp. 80-87)

Alice P. Sterner (Educator, Columbia University)

Result of a survey of the leisure language activities of 372 pupils of Barringer High School, Newark, N. J., secured from the investigator's English classes during three different semesters.

"So many media influence the adolescent's mind that the power of any single one has often been over-emphasized. The sinister effect of the thriller movie or the dulling poison of the worthless radio program is not in itself so powerful as many reformers fear. Taken all together, however, these out-of-school language activities do have great influence over the adolescent's development . . . Without these media to enrich their lives, many adolescents would lead a dull, dreary existence. The escape may seem to an adult cheap and time wasting, but unless something more wholesome can be offered in its place, such entertainment must be recognized as a very important contribution to youthful happiness . . . The place of the vicarious experiences offered in these media in making life bearable for many young people cannot be overestimated."

(Sterner, Alice P. Radio, motion picture, and reading interests; a study of high school pupils. N. Y., Teachers College, Columbia University, 1947. p. 102)

Dr. Harry Elmer Barnes (Sociologist and Criminologist, U. S. Federal Bureau of Prisons, 1948)
Negley K. Teeters (Sociologist, Temple University)

"We still find a number of 'crackpot' theories of crime causation that are accepted by large numbers of superficially informed persons . . . News articles reporting speeches by well-meaning persons give these causes for crime: (1) we have forgotten God; (2) the family is breaking down, and children no longer respect their parents; (3) the movies and dance-halls; (4) the radio;

(5) lack of moral discipline . . . Adults over forty, fathers of the youngsters who take in the exciting neighborhood movie and listen to the radio serials, too easily forget that in their youth they tasted the forbidden fruits in their childhood under strict protest from their parents. From generation to generation, the causes of crime reflect the social and religious thinking of the period. Surveying the country as a whole, there is nothing uniquely sinister about any of the habits or even vices of the moment. It is possible that occasionally a boy has been tempted to stage an amateur holdup because he saw the latest movie thriller. However, probably millions of other boys also saw that same thriller and were no so tempted. In the case of this lone delinquent we might find a variety of predisposing causes for his action, the movie being among the least significant . . ."

(Barnes, Harry Elmer and Teeters, Negley K. New horizons in criminology; the American crime problem. N.Y., Prentice-Hall, 1946. pp. 123-125, 233-235)

Mrs. Hugh Bell (Magistrates' Juvenile Court, London)

"I have been trying hard to find out from my colleagues whether they have had any experiences of a child committing some offence as a result of a film, and have never had any experiences that way myself, and the colleagues I have talked to have not either."

(Children and the cinema; report of a conference organised by the British Film Institute & National Council of Women. London, British Film Institute, June 1946. p. 8)

Dr. A. A. Brill (Psychiatrist)

"I never saw a delinquent affected by anything but himself innately. Any child who goes wrong, goes wrong because of his constitutional makeup or lack of home

life. Movies can't make a child inherently bad if he's not bad to start with."

(Children and the movies. N. Y., Newsweek Club Bureau, Platform, Feb. 1946, p. 2)

Dr. Sidonie M. Gruenberg (President of Child Study Association)

"Of course, if a very excitable child sees a very exciting picture, he will grow very excited. That goes for books and radio programs as well, but the entertainment medium is never causal—it's symptomatic."

(Children and the movies. N. Y., Newsweek Club Bureau, Platform, Feb. 1946, p. 3)

Dr. Frederick M. Thrasher (Professor of Sociology, New York University)

"We imitate only what we are interested in doing. The motion picture has no effect on the delinquency rate. We haven't been able to find any case of direct imitation picked up from the screen by a child. Where a child attributed his delinquent behavior to the movies, it is just a convenient alibi. The child was interested in delinquency, and on the path before he ever saw the movies. And in crime breeeding areas, the children see so much real crime around them that the movies are regarded as a little phony."

(Children and the movies. N. Y., Newsweek Club Bureau, Platform, Feb. 1946, p. 3)

Mary Childs Draper (Brooklyn Bureau of Social Service)

"Our family case workers, out of long experience with many hundreds of delinquent and predelinquent children, have learned that there is no one cause, just as there is no rule-of-thumb approach or cure. They will tell you that the problem lies in the individual boy or girl's re-

action to all these factors in their environment, plus the fact that life today is surcharged with tension."

(Crow, Lester D. and Crow, Alice. Our teen age boys and girls. N. Y., McGraw-Hill, 1945, p. 331)

Dr. Sheldon Glueck (Professor of Criminology, Harvard Law School)

"While we now know enough about the causes of delinquency to be sure that war brings an inevitable increase in anti-social behavior, we also know that many of the underlying causes are as yet undetermined. Much current confusion about 'what to do' stems from a too ready acceptance of superficial 'causes' artificially isolated from the combination of root forces that generate crime. Proposals for cure, based on such superficial assumptions of causation are merely guesswork, or a special pleading for some program."

(Glueck, Sheldon. What do we know about delinquency? Survey Monthly, March 1944)

Dr. R. R. Williams (Psychiatrist)

"It is to be presumed that there are so many factors operating in the development of delinquent acts, that a child or an adolescent could not definitely be tied up with a bad pattern and a delinquent act in a direct cause-and-effect relationship. There are always so many factors involved in conduct that one cannot say that *this* causative factor brought *this* behavior . . . Probably 60 to 70 percent who become delinquent attempt to rationalize and self-excuse their delinquency upon the basis of 'bad boys taught me to do these things' . . . You know how one attempts to and does comfort one's conscience through the mechanism of self-justification."

(Thurston, Henry W. Concerning juvenile delinquency. N. Y., Columbia U. Press, 1942. p. 55)

Dr. W. B. Inglis (Glasgow University Education Department)

"There is general agreement among psychologists that the cinema is seldom, if ever, a cause of juvenile crime, or of serious emotional disturbances. Many people exaggerate the influence of the cinema on character and conduct. The behavior of the individual is determined mainly by the strength of his instinctive drives and by the nature of his home. Studies of juvenile delinquency show that the more remote influences of the environment are seldom of major importance in shaping personality. To assert that the cinema is responsible for crime or that it powerfully disturbs the lives of children reveals a faulty sense of how child nature develops. 'Antisocial conduct and temperamental abnormalities arise from deeper causes than the imitation of things done on the screen."

(Ford, Richard. Children in the cinema. London, George Allen & Unwin, Ltd., 1939. pp. 76-77)

Dr. Emanuel Miller (Psychologist, Director of the East London Child Guidance Clinic)

"The films no more produce criminals than the amorality of our dreams induces us to commit crimes. I have not known a single young delinquent of more than 100 I have studied, who was deeeply influenced by films of crime. They may act the ganster, but they do not follow his career . . . I don't think there are any grounds for believing that the film industry produces gangsters."

(Ford, Richard. Children in the cinema. London, George Allen & Unwin, Ltd., 1939. pp. 87-88)

Dr. Mortimer J. Adler (Professor of the Philosophy of Law, University of Chicago)

"In the matter of juvenile delinquency, as in the case of adult criminality, there is a balance of affirmative and negative opinion. So far as there are any scientific data

even remotely relevant to this point, they are extremely unreliable and plainly inconsistent . . . In the matter of moral influence, the relevance of the scientific data is questionable.

(Adler, Mortimer J. Art and prudence. N. Y., Longmans, Green and Co., 1937. pp. 321-323, 343-344, 425-426)

Joseph Fishman (formerly U. S. Inspector of Prisons)

"In a remarkable experience with boys, continuous during the past thirty-three years, Frederick C. Helbing, Superintendent of the House of Refuge for Boys at Randall's Island, New York, has not found a single instance in which a boy's delinquency was traceable directly or indirectly to the movies."

(HARPER'S, July 1933, p. 244)

Dr. C. W. Kimmins (Late Chief Inspector of Schools of the London County Council)

"My general impression, after reading a fairly large mass of evidence carefully, is that there is no need for serious alarm. Boys do imitate the dashing or the desperate film hero, and the girls do worship him or pine to be 'her.' But is there anything new about this? The film is no worse than the old time 'blood,' universally read by the boys only a few years ago . . . What man of fifty has not been a pirate in his youth? These children at least seldom see anything on the film in which virtue and right are not merely ultimately, but immediately triumphant . . . Evil, on the films, never pays."

(Commission on Education and Cultural Films. The film in national life. London, Allen & Unwin, 1932. p. 88)

Viscount Templewood/(Former British Home Office Minister)

"My very expert and experienced advisers at the Home Office are of the opinion that on the whole the cinema conduces more to the prevention of crime than to its commission. It keeps boys out of mischief; it gives them something to think about . . . In general, the Home Office opinion is that if the cinemas had never existed there would probably be more crimes than there is, rather than less."

(House of Commons statement, April 15, 1932)

Dr. Louis E. Bisch (Neuropsychiatrist)

"Psychoanalysis has shown in every case examined that not motion pictures, books, nor any other outward influence, but the innate moral weakness of the individual himself is directly to blame for wayward tendencies. A spectator will respond to a picture only if there is something in his own character make-up which is similar to that which he sees. If what he sees is totally foreign to what he instinctively feels, the scene, whatever it is, will leave him absolutely unmoved."

(Letter to Roger Babson by Carl E. Milliken, May 7, 1929)

Dr. Joseph L. Holmes (Psychologist)

"I am convinced that the people who claim the movies are demoralizing this generation cannot back up their vague generalizations with facts. I believe my studies in this field have proved the actual unimportance of films as producers of young delinquents . . . The movies provide an outlet for the romantic imagination rather than jeopardizing our emotional stability . . . All the evidence points to the innocence of the motion picture as a stimulator of youthful depravity."

(New York Herald-Tribune, April 28, 1929)

Dr. George W. Kirchwey (Criminologist)

"In my ten years' experience in dealing with the criminal, I have never heard of an authentic case of any person who committed a crime because of the influence of a motion picture. Insofar as motion pictures have any direct effect they do not encourage crime, they discourage it . . . It seems to me absurd to say that the movie exerts a demoralizing effect on the minds or characters of those who patronize that form of entertainment. There may in the multitude of movie patrons be a few who over-do it, or who are so unstable that they get harm from excessive indulgence, to whom it becomes a form of dissipation. But I don't see any way in which the world can be made safe for morons."

(Letter to Roger Babson by Carl E. Milliken, May 7, 1929)